

EXPLANATORY MEMORANDUM TO
THE ENTERPRISE ACT 2002 (PART 8 DOMESTIC INFRINGEMENTS) ORDER 2015

2015 No. 1727

1. This explanatory memorandum has been prepared by the Department for Business, Innovations and Skills (BIS) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This Order adds Parts 1 and 2 and Chapter 5 of Part 3 of the Consumer Rights Act 2015 ('the 2015 Act') to the consumer protection measures that may be enforced within the framework of Part 8 of the Enterprise Act 2002 where a breach known as a 'domestic infringement' has occurred.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None

4. **Legislative Context**

- 4.1 The 2015 Act will bring together consumers' and businesses' rights and obligations and the investigatory powers of consumer law enforcers which are currently found in a number of pieces of secondary legislation. This will simplify the legislative framework for businesses and consumers, which is considered as burdensome and confusing.

- 4.2 Article 2 of this Order enables the enforcers specified in Part 8 of the Enterprise Act 2002 to use civil enforcement powers in that Act against businesses that have failed to comply with their legal obligations to consumers under Parts 1 and 2 and Chapter 5 of Part 3 of the 2015 Act if that 'domestic infringement' (as defined in section 211 of the Enterprise Act 2002) harms the collective interests of consumers in the United Kingdom. These powers will be available from 1st October 2015.

5. **Territorial Extent and Application**

- 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Nick Boles, Minister of State for Skills, has made the following statement regarding Human Rights:

In my view the provisions of the Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2015 are compatible with the Convention rights.

7. Policy background

7.1 UK consumers spend £90 billion a month¹. However, UK consumer law is unnecessarily complex, ambiguous in places and has not kept up with technological developments. The Government consulted extensively on reforming consumer law, culminating in 2012 with a number of formal consultations on clarifying the law in relation to the supply of goods, services and digital content, also in relation to unfair contract terms and consumer law enforcement powers including extending the range of remedies available to public enforcers of consumer law. Responses to these consultations indicated that there was broad support for the reforms from business and consumer stakeholders.

7.2 In June 2013, the Government published its response to these consultations which proposed a simple, modern framework of consumer rights. A copy of the Government's response and accompanying impact assessments can be viewed here: <https://www.gov.uk/government/publications/consumer-rights-bill>. A draft Consumer Rights Bill was published alongside the Government's response which underwent pre-legislative scrutiny in late 2013. In January 2014, the Government published a statement on Policy Reform and Responses to Pre-Legislative Scrutiny.

7.3 On 23 January 2014 the Consumer Rights Bill was introduced into Parliament and gained Royal Assent on 26 March 2015. Part 1 of the Consumer Rights Act 2015 clarifies the law where consumers purchase from businesses goods, services and digital content, such as software downloads. This will help consumers understand their rights so they can make better purchasing decisions. Businesses will better understand the law so they can serve their customers well. On the rare occasions when things go wrong businesses can be clear with a customer demanding a refund exactly when their rights entitle them to one. Part 2 simplifies the law so that consumers will be able to challenge contract terms and conditions which are not fair or are hidden in the small print. Chapter 5 of Part 3 concerns the online secondary ticketing market where tickets for sporting, recreational and cultural events are re-sold having been first acquired on the primary market from an event organiser. It covers matters such as information which must be provided regarding a ticket to its buyer when that ticket is resold online, the original terms and conditions of a ticket and reporting of criminal activity on online ticket marketplaces.

¹ Household Final Consumption Expenditure (HHFCE) for the UK. <http://www.ons.gov.uk/ons/rel/consumer-trends/consumer-trends/index.html>

7.4 The majority of the consumer rights reforms will be delivered through the Act. Alongside the 2015 Act, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ('the Regulations') implement the Consumer Rights Directive (2011/83/EU). These regulations ensure that consumers and traders are clear about the bargain they are making in three main areas: information which traders should provide to consumers; cancellation rights and responsibilities; and measures to prevent hidden costs. The Government's response to the consultation on the draft regulations is available at:

<https://www.gov.uk/government/policies/providing-better-information-and-protection-for-consumers/supporting-pages/implementing-the-consumer-rights-directive-2011-83-eu> .

The consumer law reforms constitute a fundamental reform of UK consumer rights and are predicted to boost the economy by £4 billion over the next decade. This will contribute to markets working more effectively, thereby driving economic growth.

7.5 This Order allows the enforcers specified under Part 8 of the Enterprise Act 2002 to take enforcement action in relation to breaches of Parts 1 and 2 and Chapter 5 of Part 3 of the 2015 Act in the collective interests of consumers where a breach known as a 'domestic infringement' has occurred. In this context, a consumer is an individual who receives or seeks to receive, goods, services or digital content from a business.

8. Consultation outcome

8.1 Details of the consultation process for the consumer law reforms are given in paragraph 7.1. No formal consultation has taken place on the addition of Parts 1 and 2 and Chapter 5 of Part 3 of the 2015 Act to the consumer protection measures that may be enforced within the framework of Part 8 of the Enterprise Act 2002 where a breach known as a 'domestic infringement' has occurred as provided for in this Order.

9. Guidance

9.1 Guidance has been produced on the 2015 Act here:

<http://www.businesscompanion.info/>. Guidance was also produced for the Regulations which can be viewed at: <https://www.gov.uk/government/policies/providing-better-information-and-protection-for-consumers/supporting-pages/implementing-the-consumer-rights-directive-2011-83-eu>. The Competition and Markets Authority also has an obligation to provide guidance on the operation of Part 8 of the Enterprise Act 2002. However, no guidance is being issued in relation to the provisions in this Order.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil. The Order adds Parts 1 and 2 and Chapter 5 of Part 3 of the 2015 Act to the consumer protection measures that may be enforced within the framework of Part 8 of the Enterprise Act 2002 where a breach harms the collective interest of consumers in the United Kingdom.

10.2 The impact on the public sector is nil. The Order adds Parts 1 and 2 and Chapter 5 of Part 3 of the 2015 Act to the consumer protection measures that may be enforced within the framework of Part 8 of the Enterprise Act 2002 where a breach harms the collective interest of consumers in the United Kingdom.

10.3 An Impact Assessment has not been prepared for this Order.

11. Regulating small business

11.1 This Order applies to small business to the extent that it will affect the regulatory framework for those that transact with consumers, however it will not impose any new or increased burden upon small businesses.

12. Monitoring & review

12.1 As this Order will simply add Parts 1 and 2 and Chapter 5 of Part 3 of the 2015 Act to the consumer protection measures that may be enforced within the framework of Part 8 of the Enterprise Act 2002 where a ‘domestic infringement’ has occurred, the Department does not consider it appropriate to undertake any future reviews of the Order itself given the fact that its impact is nil. However, the 2015 Act will remain subject to regular reviews to ensure it is operating efficiently and providing consumers and businesses with appropriate rights and obligations.

13. Contact

Suzanne Redding at the Department for Business, Innovation and Skills Tel: 020 7215 0439 or email suzanne.redding@bis.gsi.gov.uk can answer any queries regarding this instrument.